

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

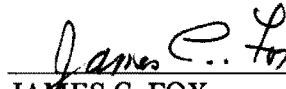
No. 5:08-CV-25-F

ABB, INC.,	)	
Plaintiff,	)	
	)	
v.	)	<u>ORDER</u>
	)	
CSX TRANSPORTATION, INC.,	)	
Defendant.	)	

The court again has reviewed CSXT's Motion for Summary Judgment [DE-48-1] on the issues that remain following entry of this court's order of March 22, 2012 [DE-105] allowing CSXT's motion for summary judgment on its affirmative defense of limitation of liability [DE-48-2]. In that resolution of the remaining issues will require evaluation of witness credibility and fact-finding upon assessment of conflicting "expert" (or "opinion") witness testimony concerning mechanical, scientific and technical evidence, the court concludes that genuine issues of material fact abound necessitating a trial. CSXT's Motion for Summary Judgment [DE-48-1] as to ABB's Carmack claim is DENIED.

A trial date during this court's May 14, 2012, term of court<sup>1</sup> has been announced. The Clerk of Court is DIRECTED to re-schedule the parties' Pretrial Conference with Magistrate Judge David W. Daniel, at his direction in light of that trial date.

SO ORDERED. This, the 6<sup>th</sup> day of April, 2012.

  
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JAMES C. FOX  
Senior United States District Judge

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<sup>1</sup> The last scheduled trial date, June 6, 2011, was abandoned after the parties requested a court-hosted settlement conference, which concluded unsuccessfully on June 7, 2011. See Minute Entry [DE-103]. At that point, the matter was re-submitted to the undersigned on the cross-motions for summary judgment.